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09/545,015	04/07/2000	Seth Haberman	20429/1	9448

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[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

2614

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/545,015	HABERMAN ET AL.	
	Examiner Nathan A Sloan	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 May 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-13 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 07 April 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8</u>	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended claims 1 and 10 and introduced new independent claim 13 to recite a limitation that "at least one media segment slot overlaps another media segment slot." Examiner has supplied Perine et al. (4,814,883) as teaching this feature, and correspondingly views claims 1-13 as unpatentable over Picco (6,029,045), in view of Hite (5,774,170), and in further view of Perine (4,814,883) as addressed below.

Because applicant failed to adequately traverse the Official Notice taken for claim 4 regarding use of background and animated advertisements, this is taken to be admitted prior art. See MPEP 2144.03 (c).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Picco et al. (6,029,045) in view of Hite (5,774,170) as supplied by applicant, and in further view of Perine (4,814,883).

With respect to claims 1, 10, 11, and 13, Picco et al. teach a system used to dynamically insert commercials to an audience of viewers based on viewer profiles and demographics. Advertisers form a message campaign as is well known in the art, and may specifically target only a specific profile or geographic region. As taught in column 7, lines 55-67 and column 8, lines 1-6 local advertising data has a corresponding content profile that indicates, using distribution variables, which geographic regions to distribute advertising to. Picco does not explicitly teach that the messages are formed as part of “a message campaign, defining a narrative framework for said personalized message.” Examiner notes that it is well known for advertisers to form a series of commercials that tell a story or form a “narrative framework.” To these means, Hite (5,774,170) teaches in column 4, lines 45-51 that commercials may be formed into a series that will be displayed in order to form a story line. It would have been obvious for one skilled in the art at the time of the invention to modify the system and methods of Picco by allowing use of a “narrative framework” as taught by Hite in order to keep viewers interested in new commercials. Furthermore, the claimed “message template comprising a plurality of media segment slots” is created and selected Picco with broadcast programming containing commercial break slots for advertising. As seen in Figure 2, television signals 20 divide programming 72 into a plurality of segments, separated by local content space 74. Programming is divided by content spaces that allow insertion of advertisements or commercial breaks. These media slots, however, are not explicitly taught by Picco to overlap. Perine (4,814,883) teaches

that media segment slots may overlap in column 5, lines 23-37 as clearly shown in Figure 1. It would have been obvious for one skilled in the art at the time of the invention to modify the system and methods of Picco in view of Hite by accounting for overlapping media segment slots as taught by Perine. One would have been motivated to perform such a modification to ensure that commercials will always be available for display and thus allow cable stations to obtain advertising revenue at all times as taught by Perine in column 5, lines 31-34.

Furthermore, the claimed several "media segments correspond to a same one of said media segment slots of said message template" is met by a plurality of commercials from advertisers that may be inserted into local content spaces 74. As seen in Figure 4, database structure 146 stores a plurality of advertising segments that may be inserted into local content spaces 74. A scheduler 148 is used to determine what local content should be presented to live feeds based on statistics, taught in column 7, lines 2-25. The examiner notes that it is well known in the art to select advertisements for presentation to viewers during commercial breaks based on user preferences. Specifically, Picco et al. teach the claimed "plurality of expert rules" and assembly component "responsive to user profile data of said intended audience to apply said plurality of expert rules to said user profile data in order to select appropriate media segments for each of said media segment slots of said message template, in order to assemble said personalized message for said intended audience" with content data and profile rules that are used to select which pieces of advertisement information are presented to viewers during local content spaces, taught in column 8 lines 7-22. The selected local content or advertisement is then spliced into programming as seen in step 258 of Figure 10.

With respect to claim 2, the claimed “audience having no direct control over said narrative framework for said personalized messages” is met by Picco with a system that collects and stores user profile statistics and compares these statistics to advertisement content profiles to determine a match of advertisements of interest to viewers, and by Hite by defining a narrative framework of commercials that tell a story.

With respect to claim 3, the claimed use of environmental or temporal information to select appropriate message is taught in column 6, lines 59-67 and column 8, lines 1-2 with the use of temporal information regarding the time of day to display content, stored in the content profile. As noted above, the content profile is then taught in column 8 lines 7-22 to be compared to user profiles to determine which advertisements to display.

With respect to claim 4, Picco et al. do not teach “media segments selected from the group including audio, video, background, animation, synthesized graphics, and voice.” As seen in Figure 8, an audio unit 190, video unit 192, and graphics unit 194 exist but no mention is made of background or animation media segments. Examiner notes that advertisers are well known to advertise using a variety of formats including those claimed. Examiner takes Official Notice that it is well known in the art to use background and animated advertisements. It would have been obvious for one skilled in the art to modify the methods taught by Picco with the addition of background and animated media segments in order to provide a variety of advertisements that catch the attention of viewers.

With respect to claim 5, the claimed multiple media segments being of different lengths, and “said message template appropriately adjusts said personalized message based on a length of a selected one of said media segments” is taught by Picco with reformatting data streams

containing programming and content streams. As taught in column 11, lines 4-9 an appropriate piece of content or advertisement is selected based on size of space in the programming stream, and the data stream may be reformatted to accept it. Both the local content data stream and the programming stream are reformatted, taught in column 12, lines 24-30, and the resulting data stream is presented to viewers.

With respect to claims 6 and 12, the claimed assembling of the personalized message “immediately before presentation to said intended audience” is met by selecting a local content advertisement during a live feed, immediately before presentation, to display to viewers. As seen in Figure 10, while programming data 252 is being displayed if a local content space is discovered an advertisement is selected using the methods discussed above and spliced into programming data at step 258. As taught in column 8, lines 7-11 the local content is inserted during live feed as needed.

With respect to claim 7, the claimed “user profile data of said intended audience is obtained from a plurality of user information data sources” is taught in column 7, lines 2-32 with the requesting of household statistics by scheduler 148 of Figure 4. As seen in figure 3, a plurality of houses exist that may transmit profile data, each being a user individual data source as claimed.

With respect to claims 8 and 9, the claimed message campaign including a target entity profile is met as noted above by content profiles associated with content data. Advertisers distribute advertisements with content profiles that are compared to user profile data to provide “an indication of appropriate media segments” as claimed. As seen in Figure 9, the content profile is compared to viewer preferences at step 234 to determine if the content is appropriate

for a viewer. In this manner the content profile, claimed target entity profile, is used to select an audience from user information sources by selecting only viewers indicating a match through user profiles. Column 7, lines 61-67 and column 8, lines 1-6 teach by example that this process is particularly useful to target viewers in particular geographic regions by using a distribution variable within the content profile.

*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hendricks et al. (6,463,585) teaches a system and method for providing targeted advertisements to television viewers.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A Sloan whose telephone number is (703)305-8143. The examiner can normally be reached on Monday-Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached on (703) 305-4795. The fax phone number for the organization where this application or proceeding is assigned is (703)308-5399.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-3900.



JOHN MILLER  
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